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REC'D TN  
REGULATORY AUTHORITY  
FEB 29 AM 10:57  
OFFICE OF THE  
EXECUTIVE SECRETARY

February 29, 2000

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Petition for Arbitration of the Interconnection Agreement Between BellSouth  
Telecommunications, Inc. and Intermedia Communications Inc. Pursuant to Section  
252(b) of the Telecommunications Act of 1996; Docket No. 99-00948

Dear Mr. Waddell:

I am enclosing the original and 13 copies of Intermedia's procedural brief in the above-referenced matter requested by the Authority in its Notice of February 23, 2000.

Sincerely,



H. LaDon Baltimore

LDB/dcg

Enclosures

cc: Guy Hicks, Esq.

POSTED  
2-29-00

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

2000 FEB 23  
REGULATORY AUTH.

In re:

Petition for Arbitration of the Interconnection  
Agreement Between BellSouth  
Telecommunications, Inc. and Intermedia  
Communications Inc. Pursuant to  
Section 252(b) of the Telecommunications  
Act of 1996

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Docket No. 99-00948

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EXECUTIVE SECRETARY

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**BRIEF OF INTERMEDIA COMMUNICATIONS INC.**

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INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), through its undersigned counsel and pursuant to the Authority's *Notice*,<sup>1</sup> hereby respectfully submits its brief addressing several procedural issues.

**BACKGROUND**

On December 7, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a petition for arbitration with the Authority pursuant to Section 252(b) of the Communications Act of 1934, as amended<sup>2</sup> (the "Communications Act"), seeking resolution of certain issues arising between it and Intermedia Communications Inc. ("Intermedia") in the negotiation of a new interconnection agreement (the "Petition"). Intermedia filed its Answer and New Matter to the Petition on January 3, 2000 (the "Answer"), in which Intermedia responded to BellSouth's contentions and identified several issues which were not specifically discussed in BellSouth's Petition.

On February 23, 2000, the Authority released its *Notice*, in which it scheduled a prehearing conference in the instant proceeding. In addition, the Authority requested that Intermedia and BellSouth (the "Parties") file briefs addressing the following issues:

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<sup>1</sup> Notice of Prehearing Conference, Docket No. 99-00948 (issued Feb. 23, 2000) (*Notice*).  
<sup>2</sup> 47 U.S.C. § 252(b).

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- Briefing Question No. 1: How were the negotiations commenced? Were they commenced pursuant to Section 251(b)(1) of the 1996 Act?
- Briefing Question No. 2: Is a request for negotiations under Section 252(b)(1) jurisdictional?
- Briefing Question No. 3: What is the actual history of the petition, including the date that “triggers” the 135-160 day “window”?
- Briefing Question No. 4 What is the present posture of the negotiations?

Intermedia responds *seriatim* below to the questions posed by the Authority.

### **RESPONSE TO BRIEFING QUESTIONS**

#### ***Briefing Question No. 1: How were the Negotiations Commenced? Were they Commenced Pursuant to Section 251(b)(1) of the 1996 Act?***

On or about July 1, 1996, Intermedia and BellSouth entered into an interconnection agreement, which was subsequently approved by the Authority (the “Interconnection Agreement”). The Interconnection Agreement was for a period of two years, expiring on July 1, 1998. On February 16, 1999, the Interconnection Agreement was extended mutually by Intermedia and BellSouth until December 31, 1999. In addition, the Parties amended the Interconnection Agreement to, among other things, specifically provide that *both* Intermedia and BellSouth shall *commence negotiations* no later than 180 days prior to the expiration of the Interconnection Agreement.<sup>3</sup>

By letter dated June 28, 1999, in anticipation of the expiration of the Interconnection Agreement, as amended, and pursuant to its terms, BellSouth provided to Intermedia a request for negotiation of a new interconnection agreement. The request for negotiation was made in conformity with the provisions of the Interconnection Agreement, as amended, and Sections 251 and 252 of the Communications Act.

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<sup>3</sup> See Amendment to Interconnection Agreement (signed Feb. 16, 1999).

***Briefing Question No. 2: Is a Request for Negotiations Under Section 252(b)(1) Jurisdictional?***

To the extent the Authority seeks to determine whether an incumbent local exchange carrier, such as BellSouth, may submit a request for negotiations under the Communications Act that would trigger the arbitration provisions of Section 252(b)(1), Intermedia responds in the affirmative.

First, the Communications Act encourages the parties to an interconnection agreement to negotiate the terms and conditions that will govern their intercarrier relationship. In pursuit of that objective, Intermedia and BellSouth mutually and voluntarily agreed in the Interconnection Agreement that *either* party may seek negotiation of a new interconnection agreement.<sup>4</sup> This Authority approved the Interconnection Agreement pursuant to the requirements of the Communications Act. Because the Authority-approved Interconnection Agreement explicitly permits *either* party to initiate interconnection negotiation at the appropriate time, reading Section 252(b)(1) to preclude BellSouth from initiating interconnection negotiations will render Section III.B of the Interconnection Agreement ineffective and meaningless. Moreover, it will undermine this Authority's prior approval of the Interconnection Agreement.

Second, Section 252(b)(1) of the Communications Act states, in relevant part:

(1) ARBITRATION.—During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.<sup>5</sup>

Although the language of Section 252(b)(1) is phrased in a manner that would suggest that the requesting carrier often is the competing carrier, nothing in the Communications Act

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<sup>4</sup> Interconnection Agreement, Section III.B.  
<sup>5</sup> 47 U.S.C. § 252(b)(1).

expressly precludes the incumbent local exchange carrier from being the initiator. In fact, Section 252(b)(4)(C), which governs the timing of the state commission's arbitration decision, speaks in terms of the "local exchange carrier[s]" (and *not* the "*incumbent* local exchange carrier's") receipt of the interconnection request.<sup>6</sup> This makes clear that *either* the incumbent local exchange carrier *or* the competitive local exchange carrier may initiate interconnection negotiation.

Similarly, Section 252(b)(1) plainly states that *either* party to the negotiation may seek arbitration. It neither prohibits the incumbent local exchange carrier from filing a petition for arbitration with the relevant state commission, nor places the onus of filing a petition for arbitration on the competing carrier.

Finally, Intermedia respectfully submits that BellSouth filed a similar petition for arbitration in Alabama, Florida, Georgia, Louisiana, and North Carolina. Notably, none of the commissions in these states has questioned the propriety of BellSouth's interconnection request or petition for arbitration. In fact, the North Carolina Public Service Commission allowed the Intermedia-BellSouth arbitration hearing to proceed last week. In addition, the Florida Public Service Commission and the Louisiana Public Service Commission both have scheduled similar hearings. It is not unreasonable to assume that these state commissions would have taken issue with the arbitration petition if they believed that the filing was procedurally defective.

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<sup>6</sup> Section 252(b)(4)(C) states, in relevant part:

The State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which *the local exchange carrier received the request under this section*.

47 U.S.C. § 252(b)(4)(C) (emphasis added).

***Briefing Question No. 3: What is the Actual History of the Petition, Including the Date that "Triggers" the 135-160 day "window"?***

As discussed above in response to Briefing Question No. 1, the Parties' Interconnection Agreement, as amended, expired on December 31, 1999. Prior to this expiration date and consistent with the provisions of the Interconnection Agreement, BellSouth provided to Intermedia a request for negotiation of a new interconnection agreement on June 28, 1999.

Although BellSouth's letter seeking negotiation of a new interconnection agreement was delivered to Intermedia on June 28, 1999, BellSouth and Intermedia mutually agreed that, for purposes of arbitration, the negotiations were deemed to have commenced on July 1, 1999. Accordingly, the arbitration window commenced on November 13, 1999, and terminated on December 8, 1999. Because by law the Authority must resolve all outstanding issues not later than nine (9) months after the date on which Intermedia received the request for negotiation from BellSouth,<sup>7</sup> in the absence of a waiver of the statutory period, the Authority has until April 1, 2000 to resolve the instant dispute.

***Briefing Question No. 4: What is the Present Posture of the Negotiations?***

Intermedia and BellSouth continue to engage in interconnection discussions, with a view towards resolving as many issues as can be resolved prior to hearing. Indeed, subsequent to the filing of the Parties' Petition and Answer, Intermedia and BellSouth successfully closed a number of issues. Moreover, on February 23, 2000, Intermedia and BellSouth again resolved several issues prior to the scheduled arbitration hearing in North Carolina. At last count, approximately half of the initial arbitration issues have been closed.

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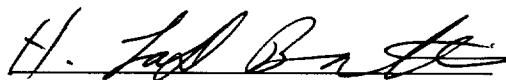
<sup>7</sup> See 47 U.S.C. § 252(b)(4)(C).

### **CONCLUSION**

The Communications Act does not preclude the incumbent local exchange carrier from initiating interconnection negotiation that would trigger the requirements of Section 252(b)(1). Moreover, nothing in the Communications Act precludes the parties to an interconnection agreement from mutually and voluntarily agreeing to place the onus of initiating interconnection negotiation of a new interconnection agreement on either party. Accordingly, BellSouth's request for interconnection negotiation and petition for arbitration are consistent with both the provisions of the Parties' Interconnection Agreement and the procedural requirements of the Communications Act.

Respectfully submitted,

**INTERMEDIA COMMUNICATIONS INC.**

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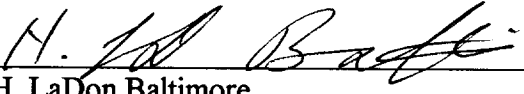
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**ITS ATTORNEYS**

Dated: February 29, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of February, 2000, a true and accurate copy of the foregoing was served by hand delivery, overnight delivery or U. S. Mail, first class postage prepaid, to Guy Hicks, Esq., BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300.

  
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H. LaDon Baltimore